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US EPA RECORDS CENTER REGION 5



481022

December 14, 1992

Ms. G. Marie Watts
Superfund Program
Management Branch (HSM-5J)
US Environmental Protection Agency
77 West Jackson Street
Chicago, IL 60604

RE: Himco Dump Site, Elkhart, Indiana

Dear Ms. Watts:

I am writing in response to Thomas W. Mateer's November 10, 1992, letter to Accra Pac regarding the above-referenced matter. That letter was received by Accra Pac about November 13, 1992. Please be advised that this office is representing Accra Pac in this matter. Thus, further communication with Accra Pac should be directed to me.

A. Objections to Instructions

Accra Pac objects to Instruction Number Six (6) as being over broad, unacceptably burdensome and in excess of EPA's authority under Section 104 of CERCLA to the extent it seeks to impose a duty upon Accra Pac to supply documents and/or information which is in the possession or control of parties over whom Accra Pac has no legal control. Without waiving that objection, Accra Pac states that it is not aware of any former employees who have any knowledge or documents which would support an inference that Accra Pac had any connection to the Himco Dump Site.

Accra Pac objects to Instruction Number Seven (7) as being in excess of EPA's authority under Section 104. Without waiving that objection however, Accra Pac states that no representative has personal knowledge of any activities by Accra Pac which would connect it to the Himco Dump Site.

The above stated objections are without prejudice to any further objections which at some time may become relevant. Similarly, objections noted below in connection with Accra Pac's responses to the requests are without prejudice to any further objections which may become relevant.

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B. Responses to Questions

1. Accra Pac objects to this request on the grounds that it is in excess of EPA's authority under Section 104 of CERCLA. Without waiving that objection, Accra Pac states that Satish Shah, Judy Hennessey and Charles Reed were consulted in the preparation of the answers to these questions.

2. Accra Pac, Inc. was incorporated in 1967. In January, 1976, the Accra Pac facility in Elkhart, Indiana, was totally destroyed by fire. All company records in existence at that time were destroyed. Accra Pac did not recommence operations until mid-to-late 1976. The Himco Dump site was apparently operated from some time in 1960 until sometime in 1976. Accordingly, existing company records would be irrelevant to the subject matter of these information requests.

3. Accra Pac has no reason to believe that there may be persons able to provide a more complete response or provide additional documents related to any of these information requests.

4. EPA I.D. Number IND042080614.

5. Accra Pac is aware of no acts or omissions of any persons described in this request who may have caused the release or threat of release of hazardous substances at the Himco Dump Site.

6. Accra Pac has undertaken a diligent and thorough effort at questioning Accra Pac employees about the Himco Dump Site, including whether Accra Pac had any involvement with the site. Accra Pac has not identified any persons described in this request with knowledge or information about the generation, transportation, treatment, disposal or other handling of material at the site.

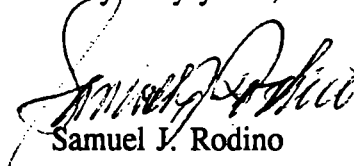
7. As stated in the response to Request Number Six (6), Accra Pac has not identified any persons who may have arranged for the disposal or treatment of waste materials, including hazardous substances, at the site. Accordingly, Accra Pac has no information, knowledge or documents relating to sub-parts (a) through (q) of this request.

8. Accra Pac objects to this question and questions 9-12 on relevance of grounds. These questions all pertain to Accra Pac's financial ability to pay for or perform a cleanup. The

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EPA has not asserted that Accra Pac is a Potentially Responsible Party (PRP) by sending Accra Pac a Section 104 General Notice of Liability letter or by any other means. Also, as shown by Accra Pac's answer to Question Seven (7), it has no information or documents which would support an inference that it is a PRP. Section 104(e)(2)(C) allows EPA to require "[i]nformation relating to the ability of a person to pay for or to perform a cleanup." However, Section 104(e)(1) restricts EPA's authority to gather information: "The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title." Because Accra Pac is not a PRP, information about its ability to pay for or to perform a cleanup would not further these information gathering purposes. Accordingly, these questions are objectionable on relevance grounds. If EPA makes Accra Pac aware of information showing that it is a PRP and send Accra Pac a General Notice of Liability Letter, Accra Pac will re-evaluate the relevance of these questions and supplement this response.

Very truly yours,



Samuel J. Rodino

SJR/mjh